

December 24, 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, DC 20554

Re: *IB Docket No. 01-185; ET Docket No. 00-258; SAT-MOD-20020719-00103; SAT-MOD-20020719-00105; SAT-T/C-20020718-00114; SAT-T/C-20020719-00104*

Dear Ms. Dortch:

On December 20, 2002, Diane Cornell and Chris Guttman-McCabe of the Cellular Telecommunications and Internet Association ("CTIA"), and the undersigned, on behalf of AT&T Wireless Services, Inc., Cingular Wireless LLC, and Verizon Wireless (jointly, the "Carriers") met with Paul Margie, Legal Advisor to Commissioner Michael J. Copps, to discuss MSS-related issues.

In response to *ex parte* submissions recently placed in the record, the Carriers discussed the attached chart and reiterated that satellite sharing precedent does not support the claim that the proposed sharing arrangements satisfy individual 2 GHz MSS licensees' milestones. In addition, the Carriers noted that the Commission's 2000 2 GHz MSS *Report and Order*, together with the plain language of the milestones, make clear that each licensee is responsible for satisfying its own milestone requirements. The Carriers also observed that the 2 GHz MSS *Report and Order* recognized the probability that some licensees would miss milestones and spectrum would be returned to the Commission.

CTIA urged the Commission not to grant terrestrial capability to MSS licensees but noted that, if the Commission is to take such action, it must ensure that any ATC capability be truly ancillary. CTIA then discussed the gating criteria it has proposed in the record in *ex parte* filings dated December 17, 2002. In addition, CTIA urged the Commission to reallocate MSS spectrum for auctioned services and to consider the significant technical issues involved in spectrum management decisions in the 1.9 and 2 GHz bands.

WILKINSON ) BARKER ) KNAUER ) LLP

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Pursuant to Section 1.1206(b)(2) of the Commission's rules, one copy of this letter is being filed electronically with respect to the rulemaking dockets, and two paper copies are being filed with the Secretary's office with respect to each application proceeding.

Respectfully submitted,

/s/ Adam D. Krinsky

Adam D. Krinsky

cc: Paul Margie

**FCC DECISIONS ON SATELLITE SHARING ARRANGEMENTS  
DO NOT SUPPORT THE CLAIM THAT SHARING SATISFIES MILESTONES**

Case	FCC Action
<i>Applications of United States Satellite Broadcasting Co. Inc.</i> , 7FCC Red 7247 (MMB 1992)	The decision did not involve milestones but rather a modification and extension of time request regarding a DBS "due diligence" showing -- a lower standard than the 2 GHz MSS milestone showing. USSB had previously demonstrated that it had entered into a contract for the construction of three satellites, and in this order the FCC allowed USSB to modify one of the three satellites. Moreover, the FCC's leniency in the case of this DBS licensee ultimately was a failure, because USSB did not construct and launch the other satellites for which it was authorized.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Red 13995 (1997) (" <i>VITA I</i> ")	The decision did not involve milestones. The case involved a licensee, VITA, that is a non-profit humanitarian aid organization committed to providing educational, health, environmental, and disaster relief communications in developing countries. The decision favorably resolved <i>de facto</i> control claims based on the unique facts of the case. (VITA was required to devote at least 50 percent of its satellite capacity for its non-commercial humanitarian purposes, among other things). In addition, this satellite was never constructed.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Red 3094 (IB 1997) (" <i>VITA II</i> ")	The decision concluded that, after the launch of VITA's first satellite failed, a milestone extension was warranted due to circumstances beyond VITA's control. The decision also resolved similar <i>de facto</i> control claims in VITA's favor. It denied, however, VITA's application to construct, launch and operate a second satellite on financial qualification grounds. In addition, this satellite was never constructed.
<i>Application of AMSC Subsidiary Corp.</i> , 13 FCC Red 12316 (IB 1998)	The decision did not involve milestones. After successfully constructing and launching its satellite and providing service for two years, AMSC was granted authority to change its space station and operate on a new facility jointly with another provider.
<i>Columbia Communications Corp.</i> , 7 FCC Red 122 (1991) (" <i>Columbia Authorization Order</i> ")	The decision did not involve milestones. Rather, the Commission granted Columbia the authority to use transponders located on a NASA satellite system which was already operational. (Columbia was required to demonstrate its financial qualifications to obtain the authorization).
<i>Columbia Communications Corp.</i> , 16 FCC Red 10867 (IB 2001) (" <i>Columbia Reconsideration Order</i> ")	The International Bureau reaffirmed that Columbia's interim authority to use capacity on a NASA system was conditioned upon the timely construction of its own system in accordance with its milestone obligations.

<p><i>GTE Spacenet Corp.</i>, 2 FCC Rcd 5312 (CCB 1987)</p>	<p>The decision demonstrates that acquiring capacity on another's satellite system does not satisfy a licensee's milestone requirements. The decision rejected Geostar's request that its authority to operate on the GTE Spacenet system should satisfy the milestone requirements imposed on the first satellite in its own system. The decision concluded that Geostar's milestone requirements remained in effect and its authorization would become null and void unless it obtained a waiver for good cause shown. In addition, Geostar never did construct any satellites.</p>
<p><i>Dominion Video Satellite, Inc.</i>, 14 FCC Rcd 8182 (IB 1999)</p>	<p>The decision concluded that sharing would not satisfy the DBS due diligence construction obligations. It found that "[n]othing in the Commission's rules . . . suggests that leasing capacity on another space station licensed to another DBS operator satisfies the due diligence requirement" to construct a satellite. In addition, Dominion never has constructed any satellites.</p>